

Remarks

This is in response to the Office Action dated June 14, 2006.

In response to item 2 of the Office Action, the examiner is respectfully requested to note that the instant application is a national phase application based on PCT application PCT/GB2004/001707 filed on April 21, 2004.

Per the requirement in item 3 of the Office Action, per the above amendment, appropriate headings have been added to the specification.

Further with respect to the 2nd paragraph in item 3 of the Office Action, inasmuch as the instant application is based on the aforenoted PCT application, a copy of the published application, namely WO 2004/096331 A2 should have been forwarded to the US PTO and should have been in the file history of the instant application. That notwithstanding, for the convenience of the examiner, a copy of the application as filed, but with printing on only one side of each of the pages, is resubmitted herewith.

In response to the 35 USC 112, 1st paragraph rejection in item 4 of the Office Action, claim 3 has been amended per above. It is believed that the non-enablement rejection of claim 3 is now moot.

As for the 35 USC 112, 1st paragraph rejection of claim 7 in item 5 of the Office Action, the examiner's attention is respectfully directed to lines 3-4 in the 2nd full paragraph on page 4 of the specification wherein it is stated: "The ring 30 could be inflatable or it may be of a resilient foam or the like ..." The item 5 rejection is therefore believed to be unwarranted and should be withdrawn.

The claims have been rejected under prior art per the following:

- (1) 35 USC 102(b) rejection of claim1 under Eamkaow (US3889688);

- (2) 35 USC 103 rejection of claims 1-6 and 8-9 under McCoy (US6840242) in combination with Eamkaow;
- (3) 35 USC 103 rejection of claim 7 under McCoy, Eamkaow and Augustine (US5638813); and
- (4) 35 USC 103 rejection of claim 10 under McCoy, Eamkaow and Shuffield (US4516578).

It is respectfully submitted that the claims as filed are distinct from the documents cited because none of those documents show a tracheostomy tube that terminates adjacent the inner end of the stoma, that is, adjacent the anterior wall of the trachea. All previous tracheostomy tubes extend down below the stoma and usually seal with the tracheal wall at some location below the stoma. However, in order to clarify this difference, per the above amendment, claim 1 has been amended by inserting the phrase "without extending below the opening" after "opening".

Turning to the documents cited in more detail:

Eamkaow (US3889688) describes a tracheostomy tube having a stoma balloon 26 on the tube that engages the wall of the trachea around the stoma. The tube is of conventional length, being curved and extending down the trachea below the stoma and having a sealing cuff inflated around the tube to seal with the wall of the trachea at a location some way below the stoma or opening into the trachea. This is, therefore, quite different from the short tube of the present invention, which terminates adjacent the inner end of the stoma and does not extend below this point.

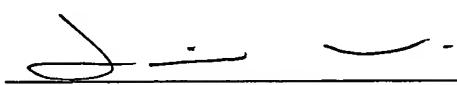
McCoy (US6840242) again describes a tracheostomy tube of conventional length that extends down the trachea from the stoma. Again, the McCoy tube has a sealing cuff towards the forward end of the tube that seals with the trachea at a location some way below the stoma.

Augustine (US5638813) describes a tracheal tube with a self-supporting cuff formed by several foam discs inside a flexible balloon. Although the patent does mention tracheostomy tubes, it describes endotracheal tubes. There is no suggestion that a tracheostomy tube of shorter length be provided such that it terminates adjacent the inside of the stoma or opening into the trachea. The whole aim of the patent is to provide a seal around a tube to seal with the wall of a trachea, whereas, in the present invention, because the tube does not extend down into the trachea, there is no requirement for such a seal.

Shuffield (US4516578) describes a rectal device having a resilient diaphragm to locate it in position. There is no mention in this document of any form of tracheal tube and, more particularly, there is no suggestion that a tracheostomy tube could be shortened to terminate adjacent the inner end of the stoma without extending down the trachea, as required by the amended claims of the present application.

In view of the foregoing, it is respectfully submitted that the instant invention is patentably distinguishable over the prior art. Accordingly, the examiner is respectfully requested to reconsider the application and pass the same to issue at an early date.

Respectfully submitted,



Louis Woo, RN 31,730
Law Offices of Louis Woo
717 North Fayette Street
Alexandria, VA 22314
(703) 299-4090

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